BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION

Generic Proceeding to Determine the Commission's Jurisdiction over Electric Vehicle Charging Stations

Docket No. 32694

Initial Comments of Alabama Power Company

Alabama Power Company ("Alabama Power" or "Company") provides the following initial comments in response to the October 30, 2017 order of the Alabama Public Service Commission ("Commission") in this docket. In the order, the Commission solicited input from interested parties on a number of matters relating to the operation of electric vehicle charging stations ("EVCS"), including the fundamental question of whether the operation of EVCS could, in certain situations, render the operator an electric utility under Title 37 of the Alabama Code and thus subject to the jurisdiction of the Commission. As explained in more detail in these comments, Alabama law calls for this question to be answered in the negative. The mere operation of EVCS does not transform such an entity into an electric utility under Title 37.

I. Introduction

Alabama Power is a corporation organized and existing under the laws of Alabama, and operates as a utility in service to the public in accordance with Title 37 of the Alabama Code. Alabama Power owns and operates an interconnected network of electric generation, transmission and distribution equipment and facilities, from and through which it creates and supplies electricity to retail customers across much of Alabama. Alabama Power's operations as a utility, as that term is defined in Alabama Code § 37-4-1(7)(a), bring it under the regulatory authority of the Commission. Moreover, as a utility Alabama Power bears the responsibility,

pursuant to Alabama Code § 37-1-49, to render adequate service to the public and to make reasonable improvements, extensions and enlargements of its facilities as necessary to meet the growth and demand of the territory under which it has a duty to serve.

Alabama Power applauds the Commission and the leadership it has exhibited in commencing this docket. The automotive industry has been and will continue to be a key contributor to Alabama's economic growth. With the introduction of Mercedes to the state in 1993, Alabama has now become the fifth largest producer of cars and light trucks in the United States. Collectively, Honda, Hyundai and Mercedes have invested nearly $10 billion into their Alabama production facilities and employ almost 12,000 Alabamians. These three companies manufacture more than one million cars annually, and Honda and Hyundai combined with Toyota produce 1.7 million engines annually.[1] In total, Alabama's automotive industry represents 57,000 jobs across more than 150 companies,[2] the vast majority of which are located within Alabama Power's service territory.

Electrification is a significant force shaping the automotive industry today, with each of Alabama's three automotive manufacturers having already announced large commitments in furtherance of that goal.

- Daimler, Mercedes' parent company, plans to offer electric versions of all its cars by 2022, including a line of all electric vehicles.[3]

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[1] *See* Economic Development Partnership of Alabama, http://www.edpa.org/key-industries/automotive.

[2] *See* Made in Alabama, http://www.madeinalabama.com/industries/industry/automotive.

[3] *See* Daimler, http://media.daimler.com/marsMediaSite/en/instance/ko/Electric-initiative-and-expansion-of-operations-in-Alabama-Mercedes-Benz-strengthens-manufacturing-footprint-in-the-US-with-1-billion-investment.xhtml?oid=29430749.

- Honda has announced plans to introduce two new all electric vehicles in 2018 and 2019 and expects two-thirds of its automotive sales to come from electric drivetrain vehicles by 2030.[4]
- Hyundai expects 10 percent of its automotive sales to be electric vehicles by 2025.[5]

Other car manufacturers not located in Alabama have made similar electrification commitments. For example, both Volvo and General Motors announced plans earlier this year for an all-electric future.[6] Indeed, Volkswagen plans to invest over $40 billion on electric vehicle, autonomous driving and other technologies, with the vast majority of that investment going "into the electrification and hybridization of all its brands' models."[7]

Additionally, Alabama's automotive manufacturers are global production centers. In 2016, automotive vehicles and parts were Alabama's largest export, totaling more than $9 billion.[8] Mercedes exports 70 percent of the cars assembled in Vance,[9] while Honda ships to 45

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[4] *See* Cadie Thompson, *Honda is firing back at Tesla and other automakers by rolling out 2 electric cars by 2018,* Business Insider (Aug. 30, 2017), http://www.businessinsider.com/honda-to-launch-2-electric-cars-by-2018-2017-8.

[5] *See* Hyunjoo Jin, *Batteries included as Hyundai amps up electric car ambitions*, Reuters (March 29, 2017), https://www.reuters.com/article/us-hyundai-motor-electric/batteries-included-as-hyundai-amps-up-electric-car-ambitions-idUSKBN17107N.

[6] *See* Nathan Bomey, *Volvo ditching gasoline engines for electric, hybrid cars after 2019*, USA Today (July 5, 2017), https://www.usatoday.com/story/money/cars/2017/07/05/volvo-gasoline-electric-vehicles/450861001; Alex Davies, *General Motors is Going All Electric*, Wired (Oct. 2, 2017), https://www.wired.com/story/general-motors-electric-cars-plan-gm.

[7] Associated Press, *Volkswagen to spend $40B on electric cars, technology through 2022*, USA Today (Nov. 17, 2017), https://www.usatoday.com/story/money/cars/2017/11/17/volkswagen-spend-40-b-electric-cars-technology-through-2022/873995001.

[8] *See* Alabama Department of Commerce, http://www.madeinalabama.com/industries/industry/automotive.

[9] *See* Bengt Halvorson, *Alabama Mercedes-Benz Plant to Assemble Battery-Electric SUV*, Car and Driver (Sept. 22, 2017), https://blog.caranddriver.com/alabama-mercedes-benz-plant-to-assemble-battery-electric-suv.

countries from its facility in Lincoln.[10] With many of the top markets for Alabama exports already having enacted stringent policies and goals for electric vehicle development, the state could see the positive economic impacts of electrification well before U.S. demand is fully developed.

The benefits of electrification, however, are already being felt within the state. As the Commission is aware, Mercedes announced in September that it would be pursuing a $1 billion expansion of its Vance operations to support production of an all-electric SUV. In addition, the efforts will include the construction of a battery production plant and the expansion of its U.S. logistics activities to facilitate the export of car-kits to global assembly plants and spare parts from the U.S. and North America to worldwide markets.[11] New Flyer, a bus and motor coach manufacturer in Anniston, also has announced increased investment as a result of its electrification initiatives. Specifically, New Flyer will be creating a vehicle innovation center and expanding its operations to support its electric bus manufacturing program.[12]

Building off the recent announcements, Alabama is positioned to see continued growth from the electrification of the automotive industry. Not only is Alabama the home of major production facilities for Honda, Hyundai and Mercedes, it is centrally located within the Southern region, an area responsible for the production of nearly 5 million cars annually. The state also has the largest reserve of flake graphite in the continental U.S., currently a significant

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[10] *See* Jerry Underwood, *World travelers: Alabama-made vehicles crisscross the globe as exports surge*, Made In Alabama (Aug. 15, 2017), http://www.madeinalabama.com/2017/08/world-travelers-alabama-made-vehicles-crisscross-the-globe-as-exports-surge.

[11] *See* Daimler, http://media.daimler.com/marsMediaSite/en/instance/ko/Electric-initiative-and-expansion-of-operations-in-Alabama-Mercedes-Benz-strengthens-manufacturing-footprint-in-the-US-with-1-billion-investment.xhtml?oid=29430749.

[12] *See* New Flyer, *New Flyer Unveils Research Hub for Bus of the Future*, Press Release (Nov. 6, 2017), https://www.newflyer.com/2017/11/new-flyer-unveils-research-hub-for-bus-of-the-future.

raw material in lithium-ion batteries.[13] The combination of a key raw material and vehicle production positions the state to span the critical components of the electric vehicle supply chain, which would give Alabama a competitive advantage compared to other states.

The state's leaders should promote and adopt policies and regulations that are supportive of the automotive industry and its electrification efforts. The automotive supply chain is regional and global. New and existing suppliers have options as to where to locate their electric vehicle production efforts, and policymakers should expect that these suppliers will choose places most conducive to growth. Accordingly, state leaders should promote the right policies and actions that display their support for the manufacturers' business goals, while helping to further encourage them and their supporting constituents to invest in Alabama rather than in other states.

This is particularly the case with EVCS. For vehicle electrification to reach its true potential, the charging infrastructure must be enhanced. The business case for EVCS nevertheless remains challenging, as market entrants face the proverbial chicken-and-egg situation. EVCS operators want more electric vehicles on the road to support their investment, while users of electric vehicle technology (or those considering it) want more visible infrastructure to relieve any concern they might hold that a battery will become depleted before they reach their intended destination or a place to charge—what is frequently referred to as "range anxiety."

Through its action in this proceeding, the Commission can play a pivotal role in promoting the development and expansion of electric vehicles. Foremost, the Commission can

[13] A current lithium-ion battery has 10 to 30 times more graphite than lithium. *See* Alabama Graphite Corp., http://alabamagraphite.com/AGC-Corprorate-Presentation-April-2017-170407-web.pdf.

recognize that the law does not call for the regulation of EVCS operators as Title 37 utilities. This is an important decision, as the development of infrastructure needs to be pursued by all entities capable of and interested in doing so. The Commission can also recognize how well positioned Alabama Power is to help bridge the infrastructure gap in place today. In this regard, automakers and other industry stakeholders consistently recognize that the involvement of the incumbent utilities is essential to the development of the needed infrastructure.[14] In sum, through its actions in this proceeding, the Commission will be able to inform the state's existing automakers, and all potential investors in this economy, that it supports the future of electrification and Alabama's commitment to growing that future as effectively as possible.

II. Commission Questions

Question 1 -- Is an EVCS a "*plant, property or facility*" utilized for the "*generation, transmission or distribution, sale or furnishing...of electricity*" pursuant to Alabama law?

An EVCS is not "plant, property or facility" utilized for the "generation, transmission or distribution, sale or furnishing ... of electricity" pursuant to Title 37 of the Code of Alabama. The sole purpose of an EVCS is to provide a charging service. Specifically, the specialized equipment allows electric vehicles to safely and effectively replenish the stored energy in their batteries. Electricity is a secondary component of this service, but the EVCS–through its

[14] *See, e.g.*, GM Comments on EV Infrastructure Development, MPSC Case No. U-18368 ("We also suggest the electric utility companies need to play a central role in both the strategic planning of EV infrastructure to ensure the most cost-effective and grid-responsible EV charging solutions, as well as in expanding EV charging infrastructure across the state. Furthermore, the electric utility companies are uniquely positioned to reach every consumer in Michigan with programs that grow consumer awareness of EVs through education and outreach.").

service–takes electricity supplied to it and makes it available to electric vehicles in a unique way that is only beneficial to them and that can be used by no one else.

The Alabama Code defines an electric utility as follows:

> UTILITY. Such term shall mean and include every person, not engaged solely in interstate business, that now or may hereafter own, operate, lease, or control:
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> a. **Any plant, property, or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat, or power, or other uses**, including any conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power, or other uses.[15]

A cursory look at the emphasized words might elicit a reaction that an owner/operator of *any device* that furnishes electricity is a utility. Neither the Commission nor the courts, however, have ever construed the statute so broadly. In fact, since the earliest enactment of the statute,[16] the electricity suppliers deemed within its scope, and thus regulated by the Commission, have been full retail service providers. These include the early twentieth century utilities Birmingham Electric Company and Mobile Electric Company, as well as Alabama Power, who were and are engaged in the business of generating, transmitting and distributing electricity to satisfy all of the retail electricity needs of all of their customers.

To be sure, the statute does not require an entity to engage in all aspects of production and supply to be a utility. But an EVCS provides a unique and limited service, a safe point at which an electric vehicle can interface with the existing electric grid. The EVCS allows for electric current (which the EVCS did not generate, transmit or distribute) to pass through the

[15] Ala. Code § 37-4-1(7)(a) (emphasis added).

[16] Acts 1920, No. 37, Sec. 2 pp. 38-39. The substance of the utility definition has remained unchanged since

charging cable to the vehicle. The EVCS also provides signals to the vehicle that alert it to the availability of current and the voltage level at which it is available. The vehicle then takes the supplied current, converts it from AC to DC current (as necessary), and allows the battery to charge. Once the battery can no longer receive a charge, the vehicle signals the EVCS and the current ceases. Similarly, the EVCS contains safety-devices that prevent current from flowing when the charger is not connected to a vehicle.[17] Separate and apart from making current available to the electric vehicle, other EVCS operators include additional service-related amenities, such as credit card support or network features (e.g., that enable users to determine if a charging station is being used before they drive to it).

Thus, while the advent of EVCS does represent a new form of end-use electric consumer activity, the EVCS nevertheless remains an end-use consumer. From the perspective of the electric vehicle, the EVCS as the end-use consumer makes sense. Electric vehicles by nature are mobile. They lack a fixed point of delivery for utility service. They require intermediaries with the existing system in order to access the charging service. One might even say that electric vehicles are to EVCS what portable appliances (e.g., hairdryers) are to outlets. However, the dependent interface between the appliance and the outlet does not render the outlet "plant, property, or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity" or cause the "outlet provider" to become a utility under Title 37.

The fact that electricity is a constituent of the service is nothing extraordinary. Sectors across the economy frequently make electricity available as part of the services they offer without concern that doing so transforms them into a regulated entity. For example, colleges

[17] *See, e.g.*, https://www.clippercreek.com/evse; https://www.greencarreports.com/news/1050948_what-is-evse-and-why-does-your-electric-car-charger-need-it.

and universities take the electricity supplied to and paid by them as the retail end-users and make it available to students in dormitories and students and faculty across campus. The Birmingham Airport Authority similarly makes the electricity supplied to it as retail end-user available not only to the passengers who frequent Birmingham-Shuttlesworth International Airport, but also the airlines that operate out of the facility.[18] Moreover, several educational systems (e.g., University of Alabama and Auburn University) and military bases own their own electric distribution systems and take retail service from Alabama Power at various delivery points along the interface of their respective systems. Yet the Commission has never viewed such systems, notwithstanding the conveyance of electricity through them to those living and working within, as the sort of plant, property or facilities within the scope of Title 37.

Situations where an end-user makes utility commodities available to the public (or a subset thereof) without becoming utilities themselves occur in non-electric contexts as well. Consider recreational facilities like health clubs, where the public (for a fee) can gain access to pools, showers and drinking fountains. Despite the fact that the utility definition in Title 37 contains a provision for water utilities essentially identical to the electric utility provision,[19] at no time has the Commission ever sought to regulate a health club operation (or like entity) as a water utility. Similarly, with the guidance of the Office of the Attorney General, the Commission for many years refused to assert jurisdiction over hotels and motels imposing a

[18] While Alabama Power does have rules applicable to the sharing and reselling of electricity (including provisions respecting same in each of its electric service tariffs), the provision of electricity as part of a service does not offend these rules where the end-use customer (e.g., the college or the airport) does not actually engage in a reselling of electricity (i.e., attempt to mark-up the cost of electricity as part of any fees or charges assessed). The fact that an EVCS may recover the cost of electricity as part of its electric vehicle charging service is no different from a commercial establishment recouping its cost of electricity through charges for its goods or services.

[19] *See* Ala. Code § 37-4-1(7)(c) ("Any plant, property, or facility for the supply, storage, distribution, or furnishing to or for the public of water for manufacturing, municipal, domestic, or other uses.").

surcharge on guests using telephone service from their rooms.[20] Only after the divestiture of AT&T, and the adoption by such hotels and motels of new practices directly involving them in the provision of telephone service, did the Commission take steps to impose certain restrictions on the surcharge practices of hotels and motels.[21] Even then, however, the Commission did not determine that such hotels or motels were transportation companies or utilities under the law.

Well-settled rules of statutory construction also bear on this question. "The polestar of statutory construction is to ascertain and give effect to the Legislature's intent in enacting a statute."[22] Words must be given their plain meaning, but where a statute's reach is uncertain, consideration should be given to the "conditions which might arise under the provisions of the statute and [the] results that will flow from giving the language in question one particular meaning."[23] The Legislature is presumed to have "intended a rational result, one that advances the legislative purpose in adopting the legislation, that is workable and fair, and that is consistent with related statutory provisions."[24] Furthermore, under the statutory construction doctrine of *ejusdem generis*, "general words, following the enumeration of particular classes of

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[20] *See* Office of the Attorney General, Opinion No. 82-00195 (Feb. 16, 1982) ("In that the statutes creating the Public Service Commission and defining its authority and powers do not give the commission regulatory power over hotels and motels which charge their guests for telephone calls placed from their rooms or the telephone company charges for long distance calls, the Attorney General is of the opinion that the commission cannot exercise jurisdiction over the hotels and motels.").

[21] *See All Providers of Telephone Service to Hotel and Motel Patrons in Alabama*, Docket No. 20428 (Feb. 22, 1989), as modified by Order dated August 17, 1989 and Order dated September 5, 2003; *see also* Office of the Attorney General, Opinion No. 82-00002 (Feb. 16, 1982)

[22] *Ex parte Berryhill*, 801 So.2d 7, 9 (Ala. 2001).

[23] *Id.* (quoting *John Deere Co. v. Gamble*, 523 So.2d 95, 100 (Ala. 1998)).

[24] *Id.* (quotations omitted).

persons or things, are construed to apply only to persons or things of the same general nature or class as those specifically enumerated."[25]

This interpretative guidance, along with the foregoing discussion of the statute's historic application, informs Alabama Power's view that legislative intent is not served by a conclusion that operation of an EVCS constitutes the use of plant, property or facilities for the generation, transmission, distribution, sale or furnishing of electricity. Where a utility service is incidental to or a constituent of a primary service being provided, then the plant, property and facilities used to provide that primary service are not rendered utility facilities. A contrary conclusion would yield the sort of unworkable outcome that the courts have sought to avoid, particularly when they have understood that the term "utility" is necessarily limited to those services which are "affected with public interest," as discussed below in the response to Question 2.

Specifically for EVCS, such a determination would potentially put the EVCS operators in violation of the exclusive electric service rights afforded holders of Legislative franchises under Title 37 and require the cessation of operations.[26] And beyond the EVCS context, the conclusion would raise the parallel question of whether any number of other entities and service providers using a utility commodity as a secondary component to their business operations fall within the scope of the utility definition. Such an outcome would not further the intent of the Legislature, and would be at odds with the longstanding interpretation and application of Title 37.

Accordingly, the answer to Question 1 is no.

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[25] *Lambert v. Wilcox County Comm'n*, 623 So.2d727, 731 (Ala. 1993); *see also Foster v. Dickinson*, 302 So.2d 111, 113 (Ala. 1974) (recognizing that words used in a "general phrase following an enumeration of particulars are commonly interpreted in a restricted sense").

[26] *See* Ala. Code §§ 37-14-30, *et seq*.

Question 2 – If it is determined that EVCS are facilities utilized for the provision of electricity as discussed in question 1 above, what constitutes the provision of electricity *"to or for the public"* under existing law? Moreover, are there any known or envisioned scenarios where EVCS may offer electricity without such offering being classified as *"to or for the public."* If so, please describe and explain such scenarios.

In addition to EVCS not falling within the "plant, property or facility" scope of Alabama Code § 37-4-1(7)(a), EVCS do not offer charging services "to or for the public", as that phrase has been interpreted and understood by the Alabama Supreme Court for over a century. In its 1988 *Coastal States* decision, the Alabama Supreme Court recognized that "an essential element of a utility is that it is both serving and is constituted to serve all the inhabitants in the area who comply with reasonable conditions."[27] The *Coastal States* Court further clarified that such a "duty to serve the public" is only "imposed [where a company is] organized to do a business **affected with a public interest** ..."[28] As such, the Alabama Supreme Court has repeatedly held that Alabama Code § 37-4-1(7) does not cover the provision of commodities or services that are not "affected with a public interest," because the "public interest" is an essential element of utility service provided "to or for the public."[29]

This conclusion is further confirmed by a 1943 opinion of the Office of the Attorney General. The opinion was prompted by a question from the Commission as to whether a distributor of butane gas that maintains "a large storage tank in which the gas is kept under pressure and piped directly from the storage tank to the consumers' homes" qualified as a

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[27] *Coastal States Gas Transmission Co., Inc. v. APSC*, 524 So. 2d 357, 359 (Ala. 1988) (quoting *Southern Liquid Gas Co. v. City of Dothan*, 44 So. 2d 744, 747 (Ala. 1950)) (emphases added).

[28] *Id.* at 360 (quoting *Miller v. Hillview Water Works Project, Inc.*, 139 So. 2d 337, 340 (Ala. 1962). *Miller* was, in turn, quoting *Birmingham Ry., Light & Power Co. v. Littleton*, 77 So. 565, 569 (Ala. 1917), which cited several earlier cases for the same proposition (including *Birmingham Waterworks Co. v. Brown*, 67 So. 613, 617-18 (Ala. 1914)).

[29] *See Coastal States*, 524 So.2d at 360-61 (noting that the phrase "to or for the public" means those services or commodities that are "essential to the general public" or are "of public consequence and need") (quoting Black's Law Dictionary, (5th ed. 1979) definition of "public utility" at 1104).

utility.[30] The Commission indicated a view that the company should be regulated as a utility, but the Office of the Attorney General disagreed:

> [Although] it may be conceded for the sake of argument that the Butane Company comes within the literal definition of a public utility ... [t]he question is [] not merely one of definition. The essential question is **whether its business ... is within the meaning of the law affected with a public interest**." *Id.* at 80 (emphases added).

Finding that the distribution of butane gas was "not a paramount industry upon which the prosperity of the entire state in large measure depends" or "a natural monopoly, or an enterprise in its nature dependent upon the grant of public privileges", the Attorney General opined that

> the definition of the public utility ... from the Alabama statute **must be qualified with the proviso that the business therein defined as a utility must be of such a nature and conducted under such circumstances as necessarily to affect it with a public interest within the well understood meaning of that phrase**.[31]

The Alabama Supreme Court subsequently adopted the 1943 Attorney General's Opinion,[32] and this view of the law and its intended reach continues to this day.[33]

The charging services afforded by EVCS are not affected with a public interest. Although important to the state's economy, the facilities are not a paramount industry—like the generation, transmission and distribution of electricity, natural gas, or water—upon which the prosperity of the entire state in large measure depends. Perhaps more importantly, EVCS are

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[30] 30 Quarterly Report of the Attorney General of Alabama 79 (1943).

[31] *Id.* at 80-81 (emphases added and quoting *New Ice Co. v. Liebmann*, 285 U.S. 267, 277 and 279 (1932))

[32] *See Hall v. Dexter Gas Co.*, 170 So.2d 796, 799 (Ala. 1964)

[33] *See Coastal States*, 524 So.2d at 360 (quoting *Dexter Gas Co.*, 170 So. 2d at 364); *see also Miller v. Hillview Water Works Project, Inc.*, 139 So. 2d 337, 340 (Ala. 1962); *Birmingham Ry., Light & Power Co. v. Littleton*, 77 So. 565, 569 (Ala. 1917); *Birmingham Waterworks Co. v. Brown*, 67 So. 613, 617-18 (Ala. 1914). *See also Coastal States* at 361 ("Those definitions of a 'public utility' accord with the position taken by this Court when it has been called upon to interpret that term.").

not a natural monopoly or an enterprise in its nature dependent upon the grant of public privileges, or so essential to the general public as to justify the grant of special franchises.[34] Accordingly, EVCS do not function "to or for the public", as that phrase has been understood by the Alabama Supreme Court for over a century, and accordingly do not fall within the scope of Alabama Code § 37-4-1(7) or the jurisdiction of the Commission.

Question 3 – If it is determined that all or some EVCS operated by an existing utility are subject to the jurisdiction of the Commission, what method and/or extent of regulation should the Commission exercise pursuant to *Code of Alabama, 1975 § 37-1-80*?

As the Commission is aware, Alabama Power already owns and operates EVCS facilities at its headquarters and at other local offices in its service territory. The expenditures associated with these facilities are regulated by the Commission, along with all other investment and expenses recovered through the Company's rates for service. To the extent the Commission authorized Alabama Power to develop additional EVCS infrastructure for public use—perhaps as part of a strategic pilot program to electrify certain interstate or state highway corridors—the capital investment and associated expenses would be regulated in the same manner as the Commission regulates other Company expenditures today. Specifically, the Commission would satisfy itself that the expenditures are in the overall interest of Alabama Power's customers, in accordance with the authority vested in it by the Legislature through Title 37 of the Alabama Code and the existing rules and regulations respecting the operations of

[34] Indeed, EVCS charging is not required by the general public, but rather is used only by those who have chosen to drive electric vehicles. *Cf. Coastal States*, 524 So.2d at 360-61.

Alabama Power. Such oversight also would extend to the expenses and revenues associated with the infrastructure to serve, and the operation of, Company-owned EVCS.[35]

As discussed in more detail in response to Question 8, Alabama Power will serve an important role in facilitating the development of EVCS infrastructure. The Company's efforts here will necessarily involve the Commission's oversight and longstanding policy of encouraging economic development activities by the Company. Such strategic initiatives could take many forms, including pilot programs, incentives and rate schedules. In all cases, however, the goal of the Company will be to advance programs that will benefit all its customers by encouraging development of an industry central to the state's economy.

Question 4 – If it is determined that all or some EVCS operated by entities that are not currently classified as utilities are subject to the jurisdiction of the Commission, what method and/or extent of regulation should the Commission exercise pursuant to Code of Alabama, 1975 § 37-1-80?

As the responses to Questions 1 and 2 demonstrate, EVCS operation, in its own right, does not provide a basis for the Commission to assert jurisdiction over such operators. That said, the Commission continues to hold its customary regulatory responsibility over Alabama Power and the retail electric service provided by it. In connection herewith, to the extent that a circumstance arose where an EVCS operator served by the Company began engaging in activities that violated the rate schedules of Alabama Power or the rules and regulations of the Company or the Commission, the Commission's jurisdiction would be implicated on an indirect, if not direct basis. For example, if in response to such a violation the Company terminated service to the EVCS

[35] Consistent with the responses to Questions 1 and 2 above, Alabama Power would emphasize that the Commission's oversight of Company expenditures would be predicated on cost recovery by the Company of such expenses through jurisdictional rates, and not because operation of an EVCS is, in its own right, a utility activity.

and the EVCS brought a complaint before the Commission, the Commission would possess the authority to address the situation.

Question 5 – Are there any other situations or scenarios beyond those presented herein where the Commission has or would have regulatory jurisdiction over EVCS?

The responses to Questions 3 and 4 appear to capture the known universe of potential scenarios, although as discussed in the response to Question 7, future developments could justify further action by the Commission.

Question 6 – If a local utility were to incorporate electric vehicle charging equipment into its curb-side street lighting infrastructure, should the operation of these charging stations be subject to the Commission's jurisdiction? If so, to what extent?

In Alabama Power's view, this question and Question 3 overlap and thus elicit largely the same answer. To the extent that the Company invested in EVCS or had expenses associated with EVCS and sought to recover those expenditures from customers, the appropriateness of cost recovery would be within the jurisdiction of the Commission, just as any other cost that is included in retail cost of service. The actual site of the Company's EVCS would not factor into that determination.

The subject of this question, lighting facilities, well serves this point. The Company offers lighting facilities both on a regulated and unregulated basis.[36] The Company is able to do this because lighting facilities themselves are not inherently jurisdictional offerings. The Commission does regulate the rates charged by the Company for lighting fixtures bundled with electricity service, as the costs and revenues associated with these offerings are associated with the Company's broader retail electric service.[37] But for offerings of lighting fixtures only, the

[36] *See generally* Docket No. U-5040.

[37] *See, e.g.*, Rate SLM (Public Street and Highway Lighting).

Commission's jurisdiction is not triggered (even though electricity flows through the fixtures and they furnish light to others), and the prices charged by the Company are reflective of market activity, similar to the Company's non-jurisdictional appliance sales operations.

Question 7 – If a third party were to generate its own electricity and use such generation for the operation of its publicly available electric vehicle charging stations, should such operations be subject the Commission's jurisdiction? If so, to what extent?

The utilization of on-site generation by an EVCS operator would not implicate the Commission's jurisdiction. Under Alabama law, retail consumers of electricity are allowed to self-generate. *See* Ala. Code § 37-14-32(4). Indeed, Alabama Power maintains rate schedules and other rules and regulations for situations where a customer desires to operate generation in parallel with Alabama Power's system, but in order to serve the customer's own needs.[38] Thus, if the EVCS operator is the owner[39] of the on-site generation, is complying with the applicable rate schedules, rules and regulations, and is using the generation strictly for its EVCS, the Commission's jurisdiction is not implicated.

This question, like Question 5, does raise the question of future developments and the implications of same. Technology has advanced in recent years, and it is possible that an application yet unknown manifests and creates questions presently beyond consideration. The

[38] *See, e.g.*, Rate PAE (Purchase of Alternate Energy) and Rate Rider RGB (Supplementary, Back-Up, or Maintenance Power).

[39] Although not a jurisdictional issue, if the EVCS owner/operator did not own the on-site generation, but instead entered into a supply contract with, or leased the generator from, a third-party that was not the designated electric supplier for the EVCS, the third-party and the EVCS owner/operator would be in violation of Alabama Code §§ 37-14-30, *et seq*.

Commission possesses the authority, however, to revisit this situation and evaluate whether a change in circumstances warrants a different course of action.[40]

Question 8 – Should the deployment of publicly available electric vehicle charging stations be considered a competitive market?

As EVCS ownership and operation is not properly subject to regulation as a utility, traditional market forces will influence its development and expansion. For this reason, however, it is important for the Commission to promote policies supportive of electric vehicle development. As the Commission recognized in its order establishing this docket, costs of electric vehicles continue to decline. A key impediment to more rapid expansion of electric vehicle use, as noted earlier, is "range anxiety"–the fear of a potential purchaser that the battery may become depleted before an EVCS can be found (or the driver reaches a destination with charging capability). Market participants remain hesitant to deploy EVCS in many jurisdictions (like Alabama), however, as the level of vehicle penetration remains at a sub-optimal level.

In these situations, Alabama Power, other electric suppliers and manufacturers who are leading the transition to an electric vehicle landscape in the state can play a crucial role to bridge the gap on range anxiety issues, through strategic pilots and other infrastructure initiatives that help instill confidence in those who would readily transition to electric vehicle ownership. Unlike independent EVCS owners, Alabama Power—and by extension, its customers—realize benefits from EVCS investment in the form of increased electricity consumption not only at the EVCS, but also at the associated residences of the electric vehicle

[40] *Cf.* Office of the Attorney General, Opinion No. 82-00195 (Feb. 16, 1982) (*citing State v. APSC*, 307 So.2d 521, 530 (1975) (recognizing that departures from administrative interpretation consistently followed must be predicated on cogent reasoning)).

drivers. Moreover, Alabama Power can recognize these benefits (as well as increasing utilization of the EVCS) over the life of the investment, which serves to cost-justify the investment relative to customers by benefiting customers overall. The goal ultimately is to spur development of the EVCS market so that it becomes a thriving, competitive environment. The Company looks forward to working with the Commission to further refine the approaches that will best position the state among the economic leaders in this emerging twenty-first century technology.

Question 9 – How are owners/operators currently charging (e.g., cents per KWh or time-based fees) for the use of EVCS?

Alabama Power understands that both approaches (as well as no charge) are used by EVCS operators. To the extent that these EVCS operators take service from Alabama Power, that service is taken in accordance with the Company's existing rate schedules and service regulations.

Question 10 – Are there any companies in Alabama currently providing public charging services for electric vehicles? If so, please provide the names and addresses of such companies.

Question 11 – Are there any EVCS facilities currently available to the public at no cost? If so, please provide the names and addresses of such facilities.

There are a number of publicly available websites that report the location of public chargers and information regarding them (including charging type and fees). Examples include the following: https://www.afdc.energy.gov/fuels/electricity_locations.html; https://chargehub.com/en/charging-stations-map.html; and https://www.plugshare.com.

III. Conclusion

Alabama Power again commends the Commission for its leadership in this important area, and appreciates the opportunity to provide comments in that regard. A number of the state's key corporate citizens already have recognized the importance of electric vehicles to the national and global economy. The speed of their success will be greatly enhanced by Commission policies that promote EVCS development and deployment, and consistent with its ongoing commitment to economic development, Alabama Power stands ready to assist.

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